

SENATE FILE NO. SF0065

Patent trolling.

Sponsored by: Senator(s) Case and Cooper and
Representative(s) Baldwin, Campbell, Jaggi
and Piiparinen

A BILL

for

1 AN ACT relating to patent infringement; prohibiting bad
2 faith assertion of patent infringement; providing
3 exceptions; specifying factors for determination of bad
4 faith; providing a right of action; providing for damages;
5 providing definitions; and providing for an effective date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9 **Section 1.** W.S. 40-1-201 through 40-1-205 are created
10 to read:

11

12 ARTICLE 2

13 BAD FAITH ASSERTION OF PATENT INFRINGEMENT

14

15 **40-1-201. Definitions.**

1

2 (a) As used in this article:

3

4 (i) "Demand letter" means a letter, email or
5 other communication asserting or claiming that the target
6 engaged in patent infringement;

7

8 (ii) "Target" means a person that:

9

10 (A) Receives a demand letter or other
11 allegation of patent infringement;

12

13 (B) Is threatened with or has a lawsuit
14 filed against the person that alleges patent infringement;
15 or

16

17 (C) Conducts business with a customer who
18 receives a demand letter asserting that the person's
19 product, service or technology infringes a patent.

20

21 **40-1-202. Bad faith assertion of patent infringement;**
22 **prohibited; factors to determine bad faith.**

23

1 (a) Except as otherwise provided in this article, no
2 person shall make a bad faith assertion of patent
3 infringement as provided in this section.

4

5 (b) A court may consider any of the following factors
6 as evidence that a person made a bad faith assertion of
7 patent infringement:

8

9 (i) The person issued a demand letter which did
10 not include one (1) or more of the following:

11

12 (A) The patent number;

13

14 (B) The name and address of the patent
15 owner and assignee, if any;

16

17 (C) Specific factual allegations describing
18 the target's product, service or technology that infringes
19 the patent or is otherwise covered by the patent.

20

21 (ii) The person did not conduct an analysis
22 comparing the patent to the product, service or technology
23 of the target prior to sending the demand letter or, if an

1 analysis was conducted, the analysis did not identify the
2 specific area that the product, service or technology of
3 the target infringes the patent or is otherwise covered by
4 the patent;

5
6 (iii) If a demand letter does not contain all of
7 the information provided in paragraph (i) of this
8 subsection and the target requests the missing information,
9 the person fails to provide the missing information within
10 thirty (30) days;

11
12 (iv) The demand letter requires a response or
13 payment of a license fee within a specified time that is
14 less than thirty (30) days;

15
16 (v) The person offers to license the patent for
17 an unreasonable amount;

18
19 (vi) The person knew or should have known that
20 the claim of patent infringement is unenforceable;

21
22 (vii) The claim of patent infringement is
23 deceptive;

1

2 (viii) The person making the assertion of patent
3 infringement does not own or have the right to enforce or
4 license the patent;

5

6 (ix) The person sent the same or substantially
7 similar demand letter to multiple recipients and made
8 assertions against a variety of products, services or
9 technologies without addressing product, service or
10 technology differences in a reasonable manner;

11

12 (x) The person made a threat of legal action
13 that the person knows or should have known cannot be
14 legally taken or is not intended to be taken;

15

16 (xi) The person falsely represents in a demand
17 letter that a complaint has been filed with a court
18 alleging patent infringement;

19

20 (xii) The claim of patent infringement is based
21 on a patent that has expired or has previously been held
22 invalid or unenforceable in a final unappealable or
23 unappealed judicial or administrative decision;

1

2 (xiii) Any other factor the court finds
3 relevant.

4

5 (c) A court may consider any of the following factors
6 as evidence that a person has not made a bad faith
7 assertion of patent infringement:

8

9 (i) The demand letter includes all of the
10 information specified in paragraph (b)(i) of this section;

11

12 (ii) If a demand letter does not contain all of
13 the information provided in paragraph (b)(i) of this
14 section and the target requests the missing information,
15 the person provides the missing information within thirty
16 (30) days;

17

18 (iii) The person engages in a good faith effort
19 to establish that the target has infringed the patent and
20 to negotiate an appropriate remedy;

21

22 (iv) The person has made a substantial
23 investment in the use of the patent or in the production or

1 sale of a product, service or technology covered by the
2 patent;

3

4 (v) The person is the inventor or joint inventor
5 of the patent or, if the patent is filed by and awarded to
6 an assignee of the original inventor or joint inventor, is
7 the original assignee of the patent;

8

9 (vi) The person has successfully enforced the
10 patent or a substantially similar patent through litigation
11 or has demonstrated good faith business practices in
12 previous efforts to enforce the patent.

13

14 **40-1-203. Private right of action.**

15

16 (a) A target or other person aggrieved by a bad faith
17 assertion of patent infringement in violation of this
18 article may bring an action in a court of proper
19 jurisdiction. A court may award any of the following
20 remedies to a plaintiff prevailing in an action brought
21 pursuant to this section:

22

23 (i) Equitable relief;

1

2 (ii) Damages;

3

4 (iii) Costs and fees, including reasonable
5 attorney fees;

6

7 (iv) Exemplary damages in an amount equal to
8 fifty thousand dollars (\$50,000.00) or three (3) times the
9 total of damages, costs and fees, whichever is greater.

10

11 **40-1-204. Enforcement.**

12

13 (a) The attorney general may enforce the provisions
14 of this article and investigate violations of this article.

15

16 (b) The attorney general or any district attorney may
17 on behalf of the state bring an action for temporary or
18 permanent injunctive or other relief in any court of
19 competent jurisdiction for any violation of this article.
20 The court may, upon entry of final judgment finding a
21 violation of this article, award restitution when
22 appropriate to any person suffering loss because of a

1 violation of this article if proof of the loss is submitted
2 to the satisfaction of the court.

3
4 **40-1-205. Exceptions.**

5
6 (a) The provisions of this article shall not apply
7 to:

8
9 (i) A person that owns or has the right to
10 license or enforce a patent if the person is:

11
12 (A) Notifying another of the ownership
13 right or enforcement right in the patent;

14
15 (B) Notifying another that the patent is
16 available for license or sale;

17
18 (C) Notifying another of the infringement
19 of the patent pursuant to title 35 of the United States
20 Code; or

21
22 (D) Seeking compensation from another
23 person for a past or present infringement of a patent, or

1 for a license, if it is reasonable to believe that the
2 person owes the compensation.

3

4 (ii) A demand letter sent by:

5

6 (A) An owner of the patent that is using
7 the patent in connection with substantial research,
8 commercial development, production, manufacturing,
9 processing or delivery of products or materials; or

10

11 (B) Any institution of higher education or
12 any technology transfer organization whose primary purpose
13 is to facilitate the commercialization of technology
14 developed by an institution of higher education.

15

16 **Section 2.** This act is effective July 1, 2016.

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18 (END)